

1 Adam Rose (210880)
2 adam@frontierlawcenter.com
3 Manny Starr (319778)
4 manny@frontierlawcenter.com
5 Frontier Law Center
23901 Calabasas Road, #1084
Calabasas, CA 91302
Telephone: (818) 914-3433
Facsimile: (818) 914-3433

6 Attorney for Plaintiff
7 Jose Gonzalez

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SANTA CLARA

10 JOSE GONZALEZ, on his own behalf and all
11 similarly situated individuals,

12 Plaintiff,

13 v.

14 SPEC PERSONNEL, LLC, PACE SUPPLY
CORP., and DOES 1 to 100,

15 Defendants.

) NO. 23CV426656

)
) PLAINTIFF JOSE GONZALEZ'S
) NOTICE OF MOTION AND MOTION
) TO APPROVE PAGA SETTLEMENT;
) MEMORANDUM OF POINTS AND
) AUTHORITIES; DECLARATION OF
) ADAM ROSE; DECLARATION OF
) JOSE GONZALEZ; PROPOSED
) ORDER

16 Date: February 13, 2025
17 Time: 2:30 p.m.
18 Dept: 7

19 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

20 Please take notice that on February 13, 2025 at 2:30 p.m. or as soon thereafter as may be
21 heard in Department 7 of the Santa Clara County Superior Court located at 191 N. First St., San
22 Jose, CA 95113, plaintiff Jose Gonzalez will move the court pursuant to Labor Code section
23 2699(s)(2) to approve the proposed PAGA settlement. The motion is based on this notice, the
24 memorandum of points and authorities, the declaration of Adam Rose, the declaration of Jose
25 Gonzalez, pleadings on file, and arguments at the hearing.

26 Date: January 15, 2025

FRONTIER LAW CENTER

27 /s/ Adam Rose
28 Attorney for Plaintiff
Jose Gonzalez

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 1. Introduction

3 Plaintiff Jose Gonzalez was assigned by Spec Personnel, LLC (“Spec”), a temporary
4 services employer as defined in Labor Code section 201.3, to work at PACE Supply (“PACE”) in
5 Santa Clara at 605 Laurelwood Rd. from June 2023 to September 2023. PACE is a wholesale
6 distributor of plumbing supplies that is based in Sonoma County.

7 Although Mr. Gonzalez worked for Spec and PACE in the warehouse for a relatively short
8 period of time, Mr. Gonzalez contends that during that time he was required to perform for work
9 performed off the clock and did not receive compliant meal and rest breaks.

10 A PAGA letter was sent to both Spec and PACE on November 25, 2023. The case was
11 initially filed in on November 27, 2023. A first amended complaint that included PAGA allegations
12 was filed on February 20, 2023. Thereafter, the parties agreed to go to mediation and the case
13 settled in principle on July 23, 2024 after a mediation with employment law mediator Steve Mehta.

14 The case was filed as a class action, yet Defendants located an arbitration agreement with a
15 class action waiver with Spec and its clients (which includes PACE). So, the mediation
16 encompassed Plaintiff’s individual claims and the PAGA claims. A declaration to dismiss the class
17 action allegations will be filed concurrent with filing this motion.

18
19 2. Summary of Settlement Terms

20 The gross PAGA settlement is \$103,635. The delineation is the following:

- 21 a. Attorney fees of \$34,545
22 b. Attorney costs up to \$12,000 (currently the amount is \$10,990.52)
23 c. Settlement administration up to \$10,000
24 d. Service enhancement of \$7,500

25 This leaves a net settlement amount of \$39,590. Of this amount, 25% or \$9,897.50 will be
26 distributed to the aggrieved employees on a pro rata basis, and 75% or \$29,692.50 will be sent to
27 the Labor and Workforce Development Agency.

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1 3. The PAGA Allegations

2 The PAGA allegations relate to the following: a) minimum wage violations, 2) overtime
3 violations, 3) meal break violations, 4) rest break violations, 5) wage statement violations, and 6)
4 waiting time penalties.

5 For the minimum wage and overtime violations, the allegation is that the aggrieved
6 employees would have to work beyond their scheduled shifts.

7 For the missed meal and rest break violations, the allegation is that the aggrieved employees
8 were required to work through the breaks.

9 For the derivative wage statement violations, the allegation is the wage statements did not
10 list the off the clock work and missed breaks on the wage statements.

11 For the waiting time penalty violations, the allegation is the wages for the off the clock
12 work and missed breaks were still owed for the aggrieved employees who stopped working.

13 As of the July 23, 2024 mediation, there was 287 aggrieved employees for the PAGA
14 settlement period of November 25, 2022 through September 24, 2024 who were assigned by Spec
15 Personnel to work at Pace Supply.

16
17 4. Summary of Maximum Liability

18 PACE is a distributor of plumbing supplies, and Spec is a staffing company. Mr.
19 Gonzalez's job responsibilities were to pick parts for drivers and customers. Plaintiff entered into a
20 separate individual settlement agreement for individual damages and separation from Spec.
21 However, the PAGA penalties are the subject of this motion.

22 For the PAGA penalties, the aggrieved employees include all Spec workers who were
23 placed at PACE locations anytime from November 25, 2022 to September 24, 2024. During the
24 mediation, Defendants stated that based on their review of the data, there were 287 aggrieved
25 employees who worked 2,961 pay periods.

26 The data produced consisted of Mr. Gonzalez's personnel file, a 20% sampling of pay data,
27 and a 20% sampling of time punch data (all the sampling shows rounded time). Thus, the
28 maximum PAGA exposure, using the initial penalty amount as the guideline basis, is the following:

Unpaid wage (off the clock) violations – 2,961 x \$100 (Labor Code 1197.1) = \$296,100
Missed meal break violations – 2,961 pay periods x \$50 (Labor Code 558) = \$148,050
Missed rest break violations – 2,961 pay periods x \$100 (Labor Code 2699) = \$296,100
Wage statement violations – 2,961 pay periods x \$100 (Labor Code 2699) = \$296,100
Waiting time violations – 287 aggrieved employees x \$100 (Labor Code 2699) = \$28,700
Total = \$1,011,050

5. Discussion of Risks and Adjusted Liability

The primary risk is that the off-the-clock and missed breaks could be limited to Plaintiff's personal experience. Plaintiff had a rather contentious relationship with his manager at the PACE location, and that relationship apparently extended into the Labor Code violations listed above.

Further, an analysis of the produced data showed the violation rate was extremely low – almost no missed meal breaks in the sampling, with an estimate of estimate of just one missed meal break every two weeks.

Further, the written meal and rest break policies were facially compliant and any argument that meal and rest breaks were not compliant would come to he said/she said testimony. Finally, there was no documentary evidence of off-the-clock work and since timecards were handwritten by each employee, the employees could have put down time they worked off the clock.

The corresponding risk for the derivative wage statement and waiting time penalties is that there could be a finding that not paying premium pay for missed meal and rest breaks was not done willfully, as explained by the Supreme Court in *Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056.)

Thus, given these risks if the case proceeded further, a more realistic total maximum PAGA exposure is 33% of the total maximum since of the 287 aggrieved employees, there is a possibility that about one-third of them experienced similar situations with the same manager and/or situations involving break issues when they were assigned to work at PACE Supply. Thus, the more realistic maximum PAGA exposure is one-third of the maximum PAGA liability, or \$343,666.50.

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1 6. The PAGA Settlement is Within the Fair, Reasonable, and Adequate

2 The gross PAGA settlement of \$103,635 is 10% of the maximum PAGA exposure and 30%
3 of the more realistic PAGA exposure. Pursuant to *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th
4 56 the settlement is fair, adequate, and reasonable, and it furthers the goals of PAGA pursuant to
5 *O'Connor v. Uber Techs., Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1132–35.

6 Further, the PAGA settlement is within the range of reasonableness. (See, e.g., *Smith v.*
7 *Kaiser Found. Hosps.*, 2020 WL 5064282, at *17 (S.D. Cal. Aug. 26, 2020) (finding that PAGA
8 award that was 2.4% of maximum estimated value of PAGA claims was not “unfair, inadequate, or
9 unreasonable given the risks of continued litigation”); *Gilmore v. McMillan-Hendryx Inc.*, 2022
10 WL 184004, at *4 (E.D. Cal. Jan. 20, 2022) (PAGA award of 4.2% of the maximum estimated
11 value of PAGA claims and 2.3% of the total settlement amount was ‘not unreasonable and weighs
12 in favor of settlement’); *Merante v. Am. Inst. for Foreign Study, Inc.*, 2022 WL 2918896, at *6
13 (N.D. Cal. July 25, 2022) (PAGA award of between 0.27% and 2% of the maximum estimated
14 value of PAGA claims was small but “within the range of reasonableness”).

15
16 7. Plaintiff’s Counsel’s Request for Attorney Fees and Costs is Reasonable

17 Plaintiff’s attorneys seek 1/3 of the gross PAGA settlement for attorney fees. Attorney fees
18 as a portion of the common fund are routinely approved. (See *Lafitte v. Robert Half Int’l, Inc.*
19 (2016) 1 Cal.5th 480, 488.) The request for attorney fees is substantiated by the monetary benefits
20 that will be conferred, as well as the uncertainty and risks if the case did not settle. Plaintiff
21 emphasizes that common fund settlements are essential for the continued prosecution of cases, and
22 the ability of law firms to represent low-wage workers on contingency who are not able to afford
23 paying attorney fees. (See, e.g., *Fleury v. Richemont N. Am., Inc.* (N.D. Cal. Apr. 14, 2009) 2009
24 WL 10100514, at *3.)

25 As explained the declaration the declaration of Adam Rose, the lodestar amount of attorney
26 fees for the work on this case is \$88,742.50. This figure is (obviously) significantly higher than the
27 requested attorney fees of \$34,545 implying that the requested attorney fees are reasonable. Also,
28 the declaration shows that Frontier Law Center’s costs as of this motion total \$10,990.52.

1 8. The Court is Authorized to Approve the Settlement

2 Pursuant to Labor Code section 2699, subdivision (s)(2), the superior court shall review and
3 approve any settlement of any civil action filed pursuant to PAGA.

4 The general guideline for a PAGA settlement is that it is fundamentally fair, reasonable, and
5 adequate with respect to the public policies underlying PAGA. (*Cotter v. Lyft, Inc.* (N.D. Cal.
6 2016) 176 F.Supp.3d 930, 931.) The purpose of PAGA has been fulfilled, since both Spec
7 Personnel and Pace Supply are now fully aware of the requirements of the Wage Orders to provide
8 meal and rest breaks and to pay for all work.

9 Thus, pursuant to the arguments above and the concurrently filed declaration of Adam Rose
10 that attaches the settlement agreement and the declaration of Jose Gonzalez that substantiates case
11 participation and the requested service award, Plaintiff respectfully requests the court to grant the
12 motion to approve the PAGA settlement.

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14 Date: January 15, 2025

FRONTIER LAW CENTER

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16 /s/ Adam Rose
17 Attorney for Plaintiff
18 Jose Gonzalez
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